UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CBRE, INC.,

Plaintiff,

-against-

THE PACE GALLERY OF NEW YORK, INC. AND THE PACE GALLERY LLC, D/B/A PACE GALLERY

Defendants.

COMPLAINT

17 Civ. ___

JURY TRIAL DEMANDED

Plaintiff, CBRE, Inc. ("CBRE"), by its attorneys, Novack Burnbaum Crystal LLP, as and for its complaint against defendants The Pace Gallery of New York, Inc. and The Pace Gallery LLC, d/b/a Pace Gallery (collectively, "Pace"), alleges as follows:

1. This lawsuit is for recovery of damages caused by Pace's failure to pay CBRE a real estate brokerage commission to which CBRE is entitled. Pace engaged CBRE pursuant to a written exclusive rights agreement to assist Pace in securing premises for its needs and agreed that, if the landlord of such premises did not pay CBRE's commission, Pace would pay it. Pace breached the agreement by, inter alia, failing to pay CBRE's commission when the involved landlord did not pay CBRE.

PARTIES

2. CBRE is a Delaware corporation duly authorized to do business in the State of New York with its principal place of business in Los Angeles, California.

3. Defendant The Pace Gallery of New York, Inc., is a New York business corporation, with its principal place of business at 32 East 57th Street, New York, New York 10022.

4. Defendant The Pace Gallery LLC is a New York limited liability company that operates several art galleries. The Pace Gallery LLC is a wholly-owned subsidiary of The Pace Gallery of New York, Inc. and, upon information and belief, does business under the name "Pace Gallery." Upon information and belief, The Pace Gallery LLC has no members other than The Pace Gallery of New York, Inc.

JURISDICTION AND VENUE

5. Subject matter jurisdiction in this matter arises under 28 U.S.C. § 1332, as this is an action between citizens of different States and the matter in controversy exceeds $75,000.

6. This Court has personal jurisdiction over both of the Defendants because each of them is a New York entity and because a substantial portion of the wrongdoing alleged herein occurred in New York.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1) and (2).

FACTS

8. CBRE is a real estate broker duly licensed by the State of New York. CBRE provides commercial real estate services to owners, investors and tenants.

9. Stuart J. Siegel ("Mr. Siegel") is a Senior Vice President at CBRE. Mr. Siegel is a real estate broker in New York and was licensed at all times relevant hereto. Mr. Siegel has performed brokerage services in New York City since 1993. Mr. Siegel was employed by CBRE at all times relevant hereto.

10. Pace is one of the top art dealers in the world, with galleries in New York City, London, Paris, Beijing, Hong Kong and Palo Alto, California.

11. Pace leases space for gallery and office space at 32 East 57th Street, New York, New York 10022.

12. Pace also leased gallery and office space in the building located at 534 West 25th Street, New York, New York 10001. (the "Premises")

13. Pace's lease at the Premises was, upon information and belief, set to expire on or about May 2015.

14. Weinberg Properties, L.P. ("Weinberg") owned the Premises.

15. On January 16, 2014, Pace's Chief Operating Officer, Chris Harnden ("Mr. Harnden"), contacted Mr. Siegel and requested his assistance in addressing Pace's gallery and office space requirements in light of the upcoming expiration of Pace's lease at the Premises.

16. Mr. Harnden informed Mr. Siegel that Pace was considering several options:

(a) Moving out of the Premises and finding a new location; or

(b) Renewing its lease at the Premises based on Weinberg's plan to demolish the building and erect a larger one at the Premises (Weinberg's Proposal").

17. Mr. Siegel promptly provided Mr. Harnden with an initial list of properties that he knew were available and suitable for Pace and, thereafter, continued to work with Mr. Harnden to assist with Pace's requirements.

18. On February 19, 2014, Messrs. Siegel and Harnden met and agreed that CBRE would have the exclusive right to locate, negotiate and secure a lease for Pace.

19. On March 18, 2014, Pace and CBRE entered into a written exclusive representation agreement, a copy of which is attached as Exhibit A (the "Exclusive Agreement"), pursuant to which:

(a) Pace gave CBRE the "exclusive right" to "find, negotiate and secure premises" for Pace excluding the space Pace leased at 57th Street but explicitly including a transaction at the Premises;

(b) Pace agreed to refer all inquiries to CBRE, regardless of the source and further agreed that "all interactions with outside parties (brokers, landlords and agents) … [would] be conducted through" CBRE;

(c) CBRE agreed that it would look to the owner or lessor of any premises for its commissions provided Pace honored its exclusivity obligations and cooperated with CBRE in obtaining a written agreement from such owner or lessor;

(d) Pace agreed that in the event it renewed its lease at the Premises or took additional premises at the Premises and Weinberg refused to pay CBRE a full market commission, Pace would pay the commission when the transaction is consummated; and

(e) Pace agreed that it would "protect" CBRE with respect to any "space that was submitted to [Pace] while [the] agreement was in effect."

20. The term of the Exclusive Agreement commenced on March 18, 2014 and ran through the later of (i) the end of one year or (b) 30 days after written notice of termination from one party to the other.

21. From March 18, 2014 to the end of December 2014, Mr. Siegel worked diligently for Pace by, *inter alia*, providing advice and direction to Mr. Harnden about market availabilities, standard market business terms, taking Mr. Harnden on numerous property tours, having in-person meetings with Mr. Harnden, and engaging in numerous email exchanges and telephone calls.

22. Mr. Siegel, in several instances, made formal written offers to the landlords/owners of buildings in which Pace was interested in renting premises.

23. Mr. Harnden informed Mr. Siegel that Pace and Weinberg would speak directly, without Mr. Siegel's direct involvement about Weinberg's Proposal, but requested that Mr. Siegel provide direction and input to assist Pace in making the best possible deal.

24. Messrs. Siegel and Harnden had numerous substantive discussions and exchanged emails relating to Weinberg's Proposal and Mr. Siegel provided behind-the-scenes intelligence and direction, educating Mr. Harnden on market comparatives regarding rents, loss factors, free rent, condition of delivery, tenant's work, and other matters, and explained to Harnden the difference between market standard "rentable" square footage v. "usable" square footage, rent increases and operating costs, and other escalations. For example, Mr. Siegel advised Mr. Harnden that the 5% annual rent increase proposed by Weinberg was significantly above market and explained that a 3% increase would be the highest for a smaller deal, but on a deal of the size being discussed with Weinberg, he should offer a 10% increase every five years.

25. Mr. Harnden asked Mr. Siegel to take him to see other locations for "a point of comparison" to what Weinberg was proposing. Mr. Siegel did so, arranging tours of other properties in and around Chelsea, including arranging a meeting for a new development comparable at a Vornado building that was being constructed in West Chelsea.

26. On or about November 12, 2014, Mr. Harnden forwarded to Mr. Siegel a detailed set of confidential architectural drawings and plans, which he had received from Weinberg, detailing what the new building at the Premises would look like when completed.

27. Mr. Harnden asked Mr. Siegel for input on Weinberg's Proposal, including ceiling heights, elevator sizes, retail and office rental value, operational/mechanical variables, free rent, tenant improvements and other considerations that were important to understand when negotiating a lease.

28. Mr. Siegel reviewed the architectural drawings and, thereafter, promptly provided to Mr. Harnden, and continued to provide to Mr. Harnden, expert and meaningful advice on how to negotiate with Weinberg a potential buildout and lease at the Premises including, but not limited to, the information Mr. Harnden had requested and comparative pricing information on similar properties.

29. Thus, while Pace was negotiating directly with Weinberg for a lease at the Premises, Mr. Harnden relied on the expert advice that Mr. Siegel provided to him in order to negotiate the best possible deal terms with Weinberg.

30. But for Mr. Harnden's direction that he not directly participate in negotiations with Weinberg, Mr. Siegel would have "conducted" "all interactions with [Weinberg]" as per the Exclusive Agreement.

31. In or about January 2015, Mr. Harnden advised Mr. Siegel that Pace and Weinberg had agreed to terms for a lease at the Premises.

32. Upon information and belief, in or about February or March 2015, Pace and Weinberg signed a lease, or a renewal or amendment of Pace's previous lease at the Premises, for premises to be occupied by Pace at the Premises ("Pace's Lease").

33. In or about June 2015, Mr. Siegel contacted Mr. Harnden to inquire about the full market commission owed to CBRE. Mr. Harnden advised Mr. Siegel that Weinberg would not pay any portion of the full market commission and Pace refused to honor its obligations under the Exclusive Agreement to pay the commission owed to CBRE. During that conversation, Mr. Harnden acknowledged that Mr. Siegel had been helpful and had provided valuable information to Pace but refused to pay CBRE the commission it was due.

34. On information and belief, Pace failed to advise Weinberg that Pace had retained CBRE to assist Pace in locating premises, at least until Mr. Siegel's request that CBRE be paid the full market commission to which it is entitled.

35. Weinberg at no time stated to CBRE that it would pay the full market commission owed to CBRE.

36. Pursuant to the terms of both the Exclusive Agreement, CBRE is entitled a full market commission from Pace.

FIRST CAUSE OF ACTION
BREACH OF CONTRACT

37. Paragraphs 1 to 36 are realleged.

38. CBRE fully performed its obligations under the Exclusive Agreement.

39. The Exclusive Agreement was fully in effect at the time of and is applicable to Pace's Lease.

40. Pace breached the Exclusive Agreement by, *inter alia*, (a) failing to "refer all inquiries to [CBRE], regardless of the source"; (b) breaching its agreement that "all interactions with outside parties (brokers, landlords and agents) … [would] be conducted through [CBRE]"; (c) failing to "cooperate with [CBRE] in obtaining a written agreement" from Weinberg for Weinberg to pay the full market commission to CBRE; (d) failing to "protect" CBRE with respect to any "space that was submitted to [Pace] while [the] agreement was in effect"; and (e) failing to pay to CBRE the full market commission required under the Exclusive Agreement following Weinberg's failure to pay such commission.

41. By reason of the foregoing, CBRE has been damaged in an amount that is not presently ascertainable but that will be shown at trial to exceed $3,000,000, plus interest.

SECOND CAUSE OF ACTION

QUANTUM MERUIT

45. Paragraphs 1 through 36 are realleged.

46. CBRE rendered valuable services to Pace.

47. Pace accepted, used, and benefited from the services provided by CBRE.

48. CBRE had a reasonable expectation that it would be compensated for the services rendered to Pace.

49. CBRE has not received payment from Pace for the services it rendered to Pace.

50. CBRE is entitled to recover the reasonable value of the services it provided to Pace.

51. The reasonable value of the services CBRE rendered to Pace will be shown at trial to exceed $3,000,000.

52. Accordingly, CBRE is entitled to recover of Pace an amount that will be shown at trial to exceed $3,000,000, plus interest.

THIRD CAUSE OF ACTION
UNJUST ENRICHMENT

53. Paragraphs 1 through 36 are realleged.

54. By reason of the foregoing, Pace has been unjustly enriched in an amount which is not presently ascertainable but which be proved at trial to exceed $3,000,000, plus interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

(a) Under the First Cause of Action, an amount that is not presently ascertainable by CBRE because Pace's Lease has not been provided to CBRE but that will be shown at trial to exceed $3,000,000, together with interest from the date that Pace signed Pace's Lease;

(b) Under the Second Cause of Action, an amount that is not presently ascertainable but that will be shown at trial to exceed $3,000,000, together with interest from the date that Pace signed Pace's Lease;

(c) Under the Third Cause of Action, an amount that is not presently ascertainable but that will be shown at trial to exceed $3,000,000, together with interest from the date that Pace signed Pace's Lease;

(d) CBRE's reasonable attorneys' fees, costs and disbursement; and

(e) Such other relief as the court deems just and proper.

Dated: New York, New York
April 5, 2017

NOVACK BURNBAUM CRYSTAL LLP

By: ______________________

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